

Minutes of the State Board of Health September 8, 2004

The Washington State Board of Health (SBOH) met at the Marcus Whitman Hotel & Conference Center in Walla Walla, Washington. Designated Chair Ed Gray called the public meeting to order at 9:35 a.m. and addressed the attendees with the following statement:

“This is a public meeting of the State Board of Health held under provisions of RCW 43.20. Notice of the meeting was provided in accordance with provisions of RCW 34.05, the Administrative Procedures Act. Those members having any conflict of interest on any item coming before the Board will report that conflict with respect to the particular subject under consideration. In case of challenge of any Board members by the public, the Board shall decide the status of the challenged members to participate before considering the substance of the matter.

Copies of all materials supplied to the Board for today’s meeting have been available since close of business last Friday from the Board’s Olympia office and on the Board’s Web site at www.sboh.wa.gov. They are also available today, along with anything else we have received since, at the table in the back of the room. To conserve public funds, we have only made as many copies as we feel will be needed, so we may run out of some particularly popular items. If you do not find a document you need, please ask Executive Assistant Desiree Robinson or another Board staff person for one.

Our meeting today is open to the public, so please feel free to listen in on informal discussions involving Board members or staff, including any that may occur during breaks or lunch.”

SBOH members present:

Charles Chu, DPM
Ed Gray, MD
Frankie Manning, MN, RN

Carl Osaki, RS, MSPH
Mary Selecky
Mel Tonasket

SBOH members absent:

The Honorable David Crump, PhD
Linda Lake, MBA

Thomas H. Locke, MD, MPH, Chair
The Honorable Carolyn Edmonds

State Board of Health Staff present:

Craig McLaughlin, Acting Executive Director
Marianne Seifert, Health Policy Advisor
Tara Wolff, Health Policy Advisor
Candi Wines, Health Policy Advisor

Desiree Robinson, Executive Assistant
Bryan Gaver, Assistant to the Board
Melissa Burke-Cain, Counsel

Guests and Other Participants:

Janice Adair, Department of Health
Anthony Anton, WA Restaurant Association
Eric Bauer, Christian Aid Center
Gary Bennett, Department of Health
David Corey, Walla Walla County Health Dept.
Brooke DuBois, Benton-Franklin Community Health Alliance
Clif Finch, WA Food Industry
Yvette Fox, Department of Health
Linda Furkay, Department of Health

Malvina Goodwin, Benton-Franklin Health District
James Green, Clean Air Now
Ellen Haars, Department of Health
Virginia Hillers, Washington State University
Kim Hoff, WA Restaurant Association
Susan Hosticka, Citizen
Barry Jenkins, Walla Walla County Health Dept.
Kathryn Kennedy, FDA
Kyle Mussman, Marcus Whitman Hotel
Howard Ostby, Senior Round Table

Chrys Ostrander, WA Sustainable Food & Farming Network
Rick Porso, Tacoma-Pierce County Health Dept.
Andy Porter, Union
Keith Powers, WA State Penitentiary
Pam Ray, Walla Walla County Health Dept.
Kerri Robinson, DOC - WSP
Jan Simon, WA State Hotel & Lodging Assoc.

Leslie Stahlnecker, Educational Service District 123
Brent Stenson, Adams County Health District
Jennifer Tebaldi, Department of Health
Greg Tompkins, Walla Walla County Health Dept.
Jason Wicklund, Christian Aid Center
Lisa Wright, Jack in the Box Restaurants
Ned Therien, Department of Health
David Gifford, Department of Health

APPROVAL OF AGENDA

Motion: Approve September 8, 2004 agenda

Motion/Second: Tonasket/Manning

Approved unanimously

ADOPTION OF JULY 14, 2004 MEETING MINUTES

Board Member Carl Osaki requested an edit of page 6 of the minutes, changing the May date from 2000 to 2005.

Motion: Approve the July 14, 2004 minutes with suggested amendment

Motion/Second: Tonasket/Osaki

Approved unanimously

SBOH ANNOUNCEMENTS & OTHER BOARD BUSINESS

Acting Executive Director, Craig McLaughlin, introduced himself and provided a short update on the Board membership. At the end of August, the Governor asked Dr. Locke to chair the Board. Dr. Locke has accepted this offer through August of 2005. Linda Lake will continue to serve as the Board's consumer representative until the Governor appoints a successor.

Mr. McLaughlin announced that the Board retreat would not be held during the October meeting but rather at the December Board meeting. This will allow the permanent Executive Director to be part of the discussion. Along these lines, Mr. McLaughlin indicated that the Board has narrowed the Executive Director search to five candidates. Letters will be going out to these candidates and they will be interviewed at the October Board meeting.

Mr. McLaughlin indicated that he received copies of a proposal to the Governor's office concerning septic issues and that he would be following up. Mr. McLaughlin mentioned that the American Lung Association of Washington has requested Board member participation in creating a state asthma plan. Currently, Tara Wolff, Policy Advisor to the Board is representing the Board in this planning effort.

Mr. McLaughlin stated that Ms. Wolff had received an invitation from KSTW, Channel 11 asking for the Board's assistance with a nutrition and physical activity campaign directed at children and families. Ms. Wolff briefly explained the campaign and the nature of the request to the Board.

Mr. McLaughlin called the Board's attention to the performance measures he drafted in response to the Priorities of Government (POG) process used in all state agencies. Finally, Mr. McLaughlin called the Board's attention to FYI and noted the abundance of articles on lead in drinking water in schools. He explained that this issue would be addressed as part of revising the Board's school environmental health rules.

DEPARTMENT OF HEALTH UPDATE

Secretary Mary Selecky said she was glad to be at the meeting and explained that Bill White and Dr. Maxine Hayes are her designated representatives when she is unable to attend. By statute, they can vote on Board matters. Secretary Selecky indicated that tests of drinking water in some Western Washington Schools have shown slightly elevated levels of lead and there is not adequate science to know whether these levels pose a health risk. She also pointed out that there are no cases of lead poisoning due to drinking water in our state. Every year about 7 percent of children in Washington State are tested for blood lead levels and about 1 percent of these children require continued monitoring. These cases are usually associated with exposure to lead via soil or paint. Department of Health (DOH) Drinking Water staff provides technical advice to schools that request their help. DOH regulates water to the point of entry into buildings.

She discussed DOH's role in the Priorities of Government process. DOH plans to focus its legislative efforts on funding a response to the reemergence of TB and to improving the medical disciplinary process. The Governor's budget is to be ready by December 20, 2004. A small legislative package is also being put together consisting of changes to rules around Hepatitis C and revisions to hospital regulatory issues. Secretary Selecky highlighted staff changes at DOH. Steve Meyers resigned and Chris Townley was now acting director of policy and legislative affairs. Mike Dunning has assumed the assistant director position in that section. Secretary Selecky said that no cases of West Nile Virus have been contracted in Washington State, and no animals or birds have tested positive.

WELCOME FROM WALLA WALLA COUNTY

The Honorable Pam Ray, Walla Walla Board of County Commissioners and Board of Health, welcomed the State Board. She noted that Walla Walla residents pay \$30 per person per year for their public health services. She feels this is a reasonable price for a valuable service.

LOCAL ISSUES

Dr. Lou Anne Cummings, Health Officer, indicated that in Walla Walla County there is decreased access to Mental Health services and dental care services, and fewer people with health care insurance. She suggested that when rules are changed that a statement of impact on local health jurisdictions be prepared—just as is done for small businesses. The Honorable Gregory A. Tompkins, Walla Walla Board of County Commissioners and Board of Health clarified that private pay Mental Health services were few in number and Ms. Ray indicated that this was especially true for mental health services for youth.

The Honorable David Carley, Walla Walla Board of Health, indicated that septic tank regulations designed to protect the Westside marine environment should not be applied statewide. State Board Member Frankie Manning asked how he would suggest regulations be designed so that they take into account the lack of resources available at local level and yet still address the problems they are intended to prevent or solve. Mr. Carley suggested that they be made for an area. Ms. Ray suggested that the criteria be developed so that if the rules are not relevant to a county they are not applied in that county. Mr. Carley and Dr. Cummings indicated that small counties are feeling a budget squeeze and are having trouble funding and finding positions to keep up with inspections of all types. They suggested that public health regulations be prioritized. Dr. Gray added that Spokane also has some of the same issues.

CAUSES OF FOOD BORNE ILLNESS IN WASHINGTON

Board Member Carl Osaki introduced the agenda item. Marianne Seifert, Policy Advisor to the Board, called the Board's attention to Tab 7 and reminded them that Governor Locke has proclaimed September as Food Safety Education Month. She then introduced Dave Gifford (DOH), who presented an overview

of the causes of food borne illness in Washington State. See the PowerPoint presentation in Tab 7 for more details.

Dr. Gray thanked Mr. Gifford and indicated that prevention is best way to manage food borne illnesses. Ms. Seifert asked about the percentage of food borne illness due to home preparation described in the presentation. Mr. Gifford replied that this number tends to be under-reported.

FOOD CODE RULE REVISION, CR-102 PUBLIC HEARING, CHAPTER 246-215 WAC

Board Member Carl Osaki called the Board's attention to the materials behind Tab 8 and introduced the issue. Mr. Osaki acknowledged DOH staff, local health officials, and other stakeholders for their work and commitment to the rule revision process. Ms. Seifert thanked all of the parties involved in the process before she introduced Jennifer Tebaldi and Ned Therien.

Jennifer Tebaldi, DOH Office of Food Safety and Shellfish, reviewed the food code rule revision process and referred to the matrix comparing the federal code and the proposed new state food code. Staff distributed summaries of written and on-line comments received through Friday September 3rd and Ms. Tebaldi reviewed these statements and how DOH addressed each one. Comments focused on bed and breakfasts, farmers and farmers' markets, adoption of the FDA food code, definition of food establishments, definition of dangerous foods, potlucks, definition of regulatory authority, and temporary food establishment hand washing containers.

Ms. Seifert reviewed public comments received by SBOH and submitted them as part of the official public testimony.

Public Testimony

Anthony Anton, Vice President of the Washington Restaurant Association, which represents 400 establishments statewide, stated that the number one priority for restaurants is food safety. He thanked DOH for its work and for inviting participation in this process. He commented that his organization supports the rules and is committed to implementing the changes. Mr. Anton highlighted some concerns that the restaurant association still has: 1) with respect to the consumer advisory requirements, the Washington Restaurant Association feels that when the consumer specifically orders a raw food it should be understood that that product is raw and the server should not have the responsibility for educating the consumer, but when it is not clear that a food product contains a raw item, then the Association supports the restaurant's responsibility for providing information; 2) he questioned provisions requiring management on site to be able to demonstrate knowledge of food handling safety; 3) he expressed concerns related to the item that addresses fingernail polish, jewelry, rings, etc. and said the association feels that some workers (e.g. those not involved in preparing food such as servers) should not be subject to these restrictions; and 4) with respect the codes and guidelines on bare hand contact with ready to eat foods, the association notes that good hand washing is the best way to ensure safe food and that gloves provide a false sense of safety. He stated that he is prepared to come back at a future date and give an update on how these issues work out as the rules are implemented. His last comment centered on local variances and the Association's concern that the language is not strong enough to ensure that all local jurisdictions will adopt the DOH rules.

Chrys Ostrander, of the Washington Sustainable Food and Farming Network, an organization of farmers, church groups, environmentalists, and others focused on the sustainability of small family farms, expressed his appreciation for the inclusion of various groups in the process but raised the following concerns. He noted that the different deadlines and ways to offer public testimony were confusing and he recommends having one deadline, one e-mail, and one Web site for public comment in the future. Mr. Ostrander noted that farmers felt that they were previously exempt from the food code and are now

uneasy that they will be under its jurisdiction. Some farmers feel that more regulations mean that their operations become less viable. He encouraged SBOH and DOH to recognize that the rules have an impact on small family farmers. He commended the revision of the section allowing permits for farmers' markets as temporary food establishments. He noted that questions related to fresh salad mixes have arisen often, and that farmers need to be able to sell whole leaf lettuce mixes without it being considered a processed food. He would like to have clarification on whether salad mixes can be sold as "not ready to eat" foods and on whether packaging salad mix in unlabeled bags is allowable. He asked if "approved source" includes farms. He also commented on the requirement to have a specially worded warning sign for raw milk. He noted that the language could be very general, for example the FDA code language that the "item has not been pasteurized." He said the proposed wording stigmatized raw milk. Mr. Ostrander requested clarification on whether or not farmers who are licensed under another agency will be required to obtain additional licensing to sell products to the consumer. He suggested that WSDA licenses processors to sell direct to public and this should not change. He commented on the definition of "food processing plant," and recommended that the phrase "does not sell directly to the consumer" be deleted. He also asked if there is a procedure for adding new foods to the exempt list in between food code revisions. His last point was regarding compensation for food at private events. He noted that private events are mostly unregulated except on the point of compensation for food and he asked the Board to consider removing the prohibition against compensation at private events.

Clif Finch, Vice President of the Washington Food Industry, expressed appreciation of the process and the DOH leadership throughout the process. He echoed many of the comments from the Restaurant Association and emphasized that the final proposed food code does not contain language regarding a review process to limit the adoption of inconsistent food codes by local jurisdictions. He requested that SBOH continue to monitor the adoption and implementation of the new food code. (See written testimony.)

Virginia 'Val' Hiller, Food Specialist, Washington State University Extension, expressed appreciation of the process and DOH's work on revising the food code. She urged caution about exempting people who profess economic hardship. She supports warning labels on unpasteurized fruit and milk products. (See written testimony.) Board Member Mel Tonasket asked about her support for changing the language on the raw milk warning as suggested by a previous speaker. She noted that raw milk is a special hazard that is used frequently by small children and thus should be singled out.

Kyle Mussman, General Manager/Owner, Marcus Whitman Hotel, testified on behalf on the Washington Restaurant and Lodging Association (WRLA). Mr. Musmann addressed the restrictions on Bed and Breakfasts with respect to only serving meals to overnight guests. WRLA feels that B&Bs should be able to serve a wider audience if they have proper permits.

Lisa Wright, Manager of Regulatory Affairs, Jack in the Box Restaurants, testified regarding the importance of having consistent food codes between the states. She endorsed the proposed rule changes. Ms. Wright expressed her appreciation for the staff's commitment and work.

Katherine Kennedy, Regional Food Specialist, FDA, expressed her appreciation for the process and thinks it is a model for other states. She encouraged the adoption of this revised rule because it is patterned after the federal codes, and thereby provides for consistency between the states and adherence to sound science-based policy.

Rick Porso, Public Health Manager, Tacoma-Pierce County Health Department, commended the staff for its good work and relayed a letter from the Executive Committee of the Washington State Environmental

Health Directors supporting the current draft of the rules. Mr. Porso acknowledged that there are some compromises within the current rules and that there is a need for training on the changes.

Motion: The Board adopts the revised Chapter 246-215 WAC as published in WSR 04-16-109.

Motion/Second: Osaki/Manning

Mr. Osaki commented that he is sensitive to comments regarding farmers' markets but emphasized that that part of the rule is not more restrictive than it was in the old code and the exempt list has been broadened (including adding mixed salad greens). Ms. Tebaldi confirmed that mixed salad is exempt if identified as not ready to eat and DOH will work with Department of Agriculture to develop a fact sheet for distribution to local health departments.

Motion: Change 246-215-011(2) to read "Bed and Breakfast operation means a private home or inn offering one or more lodging units on a temporary basis to travelers." Delete existing reference to serving registered guests only.

Motion/Second: Osaki/Manning

Approved unanimously.

Mr. Tonasket asked for clarification on beekeepers. Ms. Tebaldi confirmed that beekeepers were regulated under WSDA rule and exempt from the food code considered today. Mr. Tonasket also asked about availability of hand washing basins for temporary food establishments. Ms. Tebaldi emphasized that the basins are available at several retail stores. She noted that the requirement is important enough that operators should make any effort necessary to obtain these facilities.

Motion approved unanimously.

Motion: By January 2006, the Board receives a report back on the status of the implementation of the revised food code (Chapter 246-215 WAC); the report should specifically address the concerns raised in public testimony by the Restaurant Association and the Food Industry representatives.

Motion/Second: Osaki/Tonasket

Motion Approved unanimously

Secretary Selecky thanked those that testified for acknowledging the success of the food code rule revision process and thanked the staff for their work. Mr. Tonasket thanked the staff and invited those with concerns to continue to participate, and be involved in the update to the Board. Dr. Gray thanked Ms. Tebaldi for her concise and clear presentation.

The Board adjourned for lunch at 12:10 p.m. and resumed at 1:30 p.m.

DISCUSSION OF HOMELESS SHELTERS AND TRANSIENT ACCOMMODATIONS, CHAPTER 246-260 WAC

Board Member Carl Osaki introduced the discussion of a proposal from a homeless shelter workgroup on how the Board might approach regulation of shelters under the transient accommodations statute. He said the Board might want to provide direction for the DOH Transient Accommodation program. Mr. McLaughlin introduced Gary Bennett, Department of Health, Steve Moss, WA State Coalition for the Homeless and Linda Furkay, Department of Health. Mr. McLaughlin described forming the representative workgroup, major concerns, and the proposal before the Board today. Mr. Bennett and Mr. Moss then described the proposal from the work group. Please see materials behind Tab 9. Board members spoke about other concerns not addressed in the proposal, such as the safety of children who might be housed with people with mental health and substance abuse problems and how the proposed

framework would apply to tent cities for the homeless. Secretary Selecky suggested that these issues be included in the Board's planning process. She said DOH and SBOH has a responsibility to regulate homeless shelters, but where it fits in the Board's priorities should be considered. Mr. Osaki added that if the Board takes these recommendations as representative of the homeless population it is important to be sure the workgroup is representative. Mr. Osaki asked that the workgroup consider all the beneficiaries and think about who needs to be included. Ms. Selecky added that it is important to consider where this work is among the Board's priorities. Mr. McLaughlin added that this agenda item was intended to give the Board members information to consider when deciding on future work. Mr. Osaki added that he did not want to stop this work in progress and that he wanted to keep it on the Board agenda. Secretary Selecky replied that the recommendations stand on their own and that it was important to clarify staff requests within the context of Board priorities. Mr. Bennett offered that staff could do additional stakeholder work to address concerns about workgroup recommendations being representative. Mr. Tonasket asked Mr. Moss if there are other rules that apply to his shelter. Mr. Moss replied that there are other agencies that have oversight, such as CTED, fire department, building codes, and local health jurisdictions. Mr. Moss added there are more issues that warrant thoughtful discussion, and he appreciated the opportunity to participate, but that there is a cost for participating. Most shelters are staffed by non-profit organizations, churches, and volunteers and the participation costs are onerous.

TRANSIENT ACCOMMODATIONS, CONTINUANCE OF CR-102 HEARING, CHAPTER 246-260 WAC

Board Member Carl Osaki introduced the discussion of proposed changes to the transient accommodations rule. Mr. McLaughlin handed out the "version 2" summary of changes to WSR 04-12-117, and referred to materials behind Tab 10. Mr. McLaughlin emphasized that the version 2 materials were developed to address concerns heard at the July 14 Board meeting and other comments received subsequently. Mr. Bennett said the changes would improve communication and the focus on outcomes the regulations are designed to achieve. Mr. Osaki congratulated the TA staff and lodging industry on working hard to address concerns from the last Board meeting.

Public Testimony

Jan Simon, WA State Hotel & Lodging Association, thanked staff for their hard work in addressing industry concerns. She asked that language that would require operators to provide written evidence of compliance with building permit requirements for construction completed since the last survey be changed to apply only to construction completed within the last two years. She added they look forward to working with staff on the implementation and interpretive guidelines. She also mentioned continuing concerns about preserving guest privacy, and not allowing surveyors to enter occupied rooms. Ms. Simon described how communication has improved, and said that DOH staff and industry are seeing each other as resources. She provided the example of collaborative efforts to distribute information about fires in hotel rooms. She thanked Ellen Haars and Craig McLaughlin for their work.

Mr. Bennett replied that DOH is firm on the "between surveys" language because of the length between surveys can be longer than two years. Mr. Tonasket asked about the reason for wanting the requirement to be only for two years. Ms. Simon replied that hotels and motels have difficulty with all the paperwork and that she has not seen the necessity of it. Mr. Bennett said surveyors rely on paperwork to show the construction is up to standard.

Eric Bower, Christian Aid Center, testifying on the previous agenda item, said the homeless shelter he works for is thoroughly regulated by the fire department, the Department of Labor and Industries, and the local health department, which treats them like a restaurant. The only area he sees missing are potable water and medication issues. The local health department handles health issues. The least intrusive method would be for local health departments to require proof of potable water and CPR training. There

would be a gap outside of the city, in the county, because the county fire department does not do inspections. The cost would be minimal.

Motion: The Board adopts the revised Chapter 246-360 WAC as published in WSR 04-12-117 and amended as set forth in the summary of changes.

Motion/Second: Osaki/Manning

Approved unanimously

FOOD, FITNESS AND OUR KIDS COMMUNITY FORUM REPORT

Board Member Dr. Charles Chu introduced the issue and thanked SBOH Policy Analyst Tara Wolff for her contributions to the project. Dr. Chu provided a brief history of how the community forums were developed and mentioned the Legislature's action on SSB 5436. He also reviewed statistics on obesity, the benefits of physical activity, and the role of schools in promoting healthy behaviors.

Tara Wolff, Policy Advisor to the Board, called the Board's attention to the materials behind Tab 11. Ms. Wolff provided background information and goals for the community forums. A number of partners helped develop the forums including local health departments from five counties (Benton-Franklin, Seattle/King, Tacoma/Pierce, Clark, and Island). The community forums lay out the consequences of the epidemic and the role of schools in promoting the health of their students through policy and programs.

Brooke Dubois, Benton-Franklin Community Health Alliance provided a handout for her presentation on the community forum held in the Benton-Franklin health district. The forum included representatives from several school districts in the jurisdiction. At the conclusion of the forum, each school district committed to conducting specific activities related to promoting good nutrition and/or physical activity. The group planned to reconvene and to take the message to the broader community through a Livable Communities Forum. Annie Goodwin, Benton-Franklin Health District presented material from the Benton-Franklin community forum. Handouts of her slides are available in the meeting materials under tab 11. Ms. Wolff discussed the results from the evaluations of the community forum and highlighted some planned activities that resulted from the forums. She also identified some needed additional resources. Handouts of her slides are available in the meeting materials under tab 11.

Ms. Manning commented that the issue of nutrition and physical activity is very big and it is timely for the Board to be involved. She mentioned national reports such as those from the Institute of Medicine and the Centers for Disease Control and Prevention. She noted that the impact of the obesity epidemic is especially burdensome for children. Mr. Osaki mentioned that environmental health practitioners and planners are recognizing these issues as well and should be involved in planning solutions. Dr. Chu mentioned that walking maps of Walla Walla available at the hotel and other programs have been developed by local jurisdictions to promote physical activity. He commended such activities. Mr. Tonasket commented that many people in his region who are overweight are poor, and that they get high calorie, low nutrition foods from the food bank and the food lunch program. He commented on the need to look at solutions beyond vending machines.

PUBLIC TESTIMONY

The Board heard public testimony from the following people.

James Green testified concerning indoor air quality in schools. He expressed his thanks to SBOH Staff Marianne Seifert for her work in environmental issues. He also acknowledged past Board Chair Linda Lake's contributions to the Board's work. He stated his intention to be active in the rule revision process on the issue of school environmental health. Mr. Tonasket asked about his specific concerns regarding

indoor air quality issues. Mr. Green referred him to previous Board records and mentioned specific concerns over a contractor involved in building public schools. Ms. Seifert offered to provide more details on the background for the school environmental health rule revision.

Barry Jenkins, Walla Walla County Health Department relayed a letter to the Board regarding the onsite sewage system regulations. A copy of the letter was provided to the Board.

ADJOURNMENT

Designated Chair Ed Gray adjourned the meeting at 3:57 p.m.